THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.10604 OF 1998

DATED: 01-05-2007

Between:

Smt Zaheera Bee

.. Petitioner

and

Sri Acharya N.G. Ranga Agricultural University, Rajendranagar, Hyderabad represented by its Registrar and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.10604 OF 1998

ORDER:

This writ petition is filed seeking a mandamus declaring the action of the 2nd respondent in correcting the petitioner's date of birth in the Service Register from 03.04.1946 to 01.07.1937 without giving any opportunity to the petitioner, as arbitrary and illegal and to forbear from giving effect to the Memo No.394/Estt./1997/160, dated 06.04.1998, of the 3rd respondent.

It appears, the petitioner was working as casual labourer in the 1st respondent-University with effect from 26.12.1991. Her date of birth was recorded as 03.04.1946 in the service register. Petitioner, in fact, was asked to produce medical certificate in proof of her date of birth and accordingly she submitted a medical certificate, dated 29.12.1988, issued by Assistant Civil Surgeon showing her age as about 43 years as on that date. While the matter stood thus, the 2nd respondent altered date of birth of the petitioner as 01.07.1937 without any notice to her and without recording any reasons for the said change in the service book and, basing on the said date of birth, she was made to retire on 30.06.1997, which is arbitrary and illegal. Aggrieved by the same, she filed W.P.No.16446 of 1997 before this Court and the same was allowed on 18.12.1997 directing the respondents to issue a notice to the petitioner setting out the reasons or factors warranting alteration of the date of birth of the petitioner from 03.04.1946 to 01.07.1937 and

calling upon the petitioner to submit her explanation, if any, for the proposed action. It was further made clear that after going through the exercise as directed by the Court, if the petitioner's actual date of birth was found to be only 03.04.1946, the respondents shall reinstate her into service and she shall be permitted to serve the respondents organization till she attains the age of superannuation. In pursuance of the said directions, a notice, dated 15.01.1998, was issued asking the petitioner to prove her claim regarding the date of birth. The petitioner gave a detailed explanation stating that while she was working as casual labourer, she was asked to submit a medical certificate with regard to her age and accordingly she submitted a medical certificate, dated 29.12.1988, showing her age as about 43 years as on that date. Further, at the time of appointment as agricultural workwoman on 26.12.1991, her date of birth was entered as 03.04.1946 in her service register and again she was asked to produce a date of birth certificate from M.C.H. She further explained that the M.C.H., basing on certain records available with it, issued a certificate wherein her name was shown in the column of mother's name and her mother's name was shown in the column meant for her (petitioner's) name and her father's name was rightly shown in the column meant for his name. Thus, it is only a clerical mistake and the certificate belongs to herself but not to her mother. Therefore, there was no basis to alter her date of birth as that of 01.07.1937, except saying that the said date is entered in the seniority list of causal labour, which cannot be taken into consideration, and in fact no such communication was sent to her. It is for the department to show reasons for altering her date of birth from 03.04.1946 to 01.07.1937. The said explanation was not properly considered and a final order was passed on 06.04.1998 confirming the date of birth of the petitioner as 01.07.1937. Hence, this writ petition.

It is the contention of the learned counsel for the petitioner that in

the final order, dated 06.04.1998, altogether new material has been introduced and the aspects, which did not form part of the show cause notice or the earlier enquiry, were taken into consideration. Apart from this, the medical certificate issued by the Assistant Civil Surgeon itself shows that the petitioner was aged 43 years as on 29.12.1988. Therefore, the respondents ought not to have entertained any doubt about her date of birth.

In the counter-affidavit filed by the respondents, they reiterated the same stand as was taken in the impugned proceedings and no further statements have been made.

Heard both sides and perused the impugned proceedings and other material made available on record.

The petitioner has filed a copy of service book maintained by the respondents wherein initially her date of birth was recorded as 03.04.1946 and thereafter it was cancelled and recorded as 01.07.1937. But, no reasons were mentioned anywhere and the date of cancellation is also not known. With regard to the contention of the introduction of new material in the final order, no reply has been given in the counter-affidavit by the respondents.

There is no necessity of going into all the details.

The very explanation submitted by the petitioner is crystal clear that she had submitted a medical certificate, dated 29.12.1988, showing her age as 43 years as on that date and again at the time of appointment as an agricultural workwoman, her date of birth was entered in the service book as 03.04.1946. Insofar as issuance of date of birth certificate by the Municipal Corporation of Hyderabad is concerned, there is no dispute and the respondents never disputed the said certificate purported to have been issued by the Municipal

Corporation of Hyderabad except saying that it belongs to her mother Zani Bee. Her explanation as to how the mistake had occurred showing her name as Zani Bee in the certificate has not been taken into consideration by the respondents. Once the certificate issued by the Municipal Corporation of Hyderabad and the medical certificate, dated 29.12.1988, showing her age as 43 years as on that date, are available, it was not proper on the part of the respondents to reject the case of the petitioner and alter her date of birth as 01.07.1937 from 03.04.1946. Absolutely, there was no material before the respondents to come to the conclusion that the date of birth of the petitioner was 01.07.1937. Moreover, the said alteration was not done pursuant to any orders passed by any authority. Therefore, the impugned order is liable to be set aside and accordingly set aside and it must be deemed that the petitioner's date of birth is 03.04.1946 as recorded for the first time in the service book.

Accordingly, the writ petition is allowed declaring the date of birth of the petitioner as 03.04.1946. However, the petitioner is not entitled for any backwages etc., but she is entitled for all the notional benefits, such as, increments, gratuity, pension and other benefits accrued to her, as per law, till she attained the age of superannuation taking into account her date of birth as 03.04.1946.

C.V. RAMULU, J

1st May, 2007.
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